

**IN THE COURT OF COMMON PLEAS  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

**COMMONWEALTH**

**v.**

**DEREK EDWARDS,  
Defendant**

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**No.: 98-11,466;98-11,467**

**OPINION AND ORDER**

Before the Court is the Defendant's petition under the Post-Conviction Relief Act (PCRA), filed April 14, 2003 and the amended PCRA petition filed by his attorney on January 22, 2004. The pertinent facts of the cases are that on March 12, 1999, the Court accepted the Defendant's plea in each case to one count of Statutory Sexual Assault, a felony of the second degree. On June 11, 1999 he was sentenced to serve two consecutive terms of incarceration in a state correctional facility of one to five years. The aggregate sentence of two to ten years was made effective on July 27, 1998. Defendant therefore reached his minimum date and was eligible for parole on July 27, 2000. He remains incarcerated, his parole requests having been denied. Defendant now asserts in these petitions that his trial counsel advised him that once he reached his minimum sentence he would be paroled, assuming he had completed his mandated sex offender counseling. He complains that he was not paroled as promised and therefore his no contest plea was not knowingly, intelligently, and voluntarily entered because he did not understand the potential consequences of his plea due to the inaccurate information received from his trial counsel.

The Post-Conviction Relief Act provides under 42 Pa.C.S.A. §9745 that a PCRA petition must be filed within one year of the date that a case becomes final. See also Pennsylvania Rules of Criminal Procedure, Rule 901. The Court therefore begins by noting that the Defendant's cases became final at the expiration of the appeal period following his sentencing. Defendant was sentenced in this case on June 11, 1999. His appeal period therefore expired on July 11, 1999. No appeal was filed in his case. The period during which the Defendant could have properly filed a PCRA petition therefore expired on July 11, 2000. The PCRA Act does, however, provide three narrow exceptions to the one-year filing requirement where the petitioner alleges and proves that:

- (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;
- (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
- (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa.C.S.A. §9545(b)(1).

Defendant here asserts that his cases fall within the second exception to the timeliness requirement under the PCRA Act, that the facts upon which he bases his claim were unknown to him and could not be

ascertained with the exercise of due diligence. He argues that he did not know that he would not be paroled when he had completed his sex offender counseling and reached the minimum expiration date of his sentences until he applied for parole after those conditions had been met and his parole was subsequently denied. Defendant has not provided the Court with a date when he received notification of his denial of parole. The Commonwealth argues that with due diligence, the Defendant should have found out in excess of five years ago that his eligibility for parole is not a guarantee of parole.

The Court finds that the Defendant, with due diligence, should have known that he had no guarantee of parole at his first request shortly after he entered the state correctional facility in June or July of 2001. Defendant, exercising due diligence, certainly should have known at the time that his minimum sentence expired on July 27, 2000 what additional criteria he would have to meet to be paroled. Consequently, the Court finds that any PCRA petition was barred in the Defendant's case one year after the expiration of his minimum sentence, July 27, 2001. Defendant's first PCRA petition was filed on April 14, 2003, well beyond the statutory limitation for filing such a petition. His PCRA petition therefore must be dismissed as untimely.

**ORDER**

AND NOW, this \_\_\_\_\_ day of April, 2004, the Court hereby notifies the Defendant that for the reasons set forth above, it is the intention of this Court to dismiss his PCRA petition unless he files an objection to that dismissal within twenty days of today's date.

By the Court,

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Nancy L. Butts, Judge J.

xc: DA (KO)  
Eric Linhardt, Esquire  
Hon. Nancy L. Butts  
Judges  
Gary Weber, Esquire  
Diane L. Turner, Esquire